

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

IN RE NEW ENGLAND COMPOUNDING
PHARMACY, INC. PRODUCTS LIABILITY
LITIGATION

THIS DOCUMENT RELATES TO:

All Actions

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)
)
)
) MDL No. 2419

) Dkt. No. 1:13-md-02419 (RWZ)

**PRESERVATION REQUEST IN RESPONSE TO POST-CONFIRMATION OFFICER'S
NOTICE REGARDING FURTHER RELIEF FROM PRESERVATION ORDER
[DOCKET NO. 3136]**

Undersigned defendants in the criminal case [Docket No. 1:14-cr-10363-RGS]
“Requestors”) file this Preservation Request so that documents and information critical to their
defense in the criminal case are maintained in the current, searchable format for several more
months until the trials in the criminal matter have been completed. Requestors will be prejudiced
if New England Compounding Center’s (“NECC”) documents are archived and stored at
precisely the time when Requestors will need to subpoena documents from NECC to defend
themselves.

The criminal trial for two of the Requestors, Cadden and Chin, begins in approximately
two months (January 5, 2017). The remaining Requestors are to be tried immediately following
Cadden and Chin; that trial is scheduled to begin on April 10, 2017. Requestors’ defense in the
criminal case will be thwarted if NECC’s business documents are archived before Requestors
can serve subpoenas upon NECC and other third parties. Notably, Requestors’ determination of
which NECC documents must be subpoenaed cannot be completed until Requestors receive

witness lists, exhibits lists, and other pre-trial disclosures from the government in the criminal case.

Though Requestors appreciate the Trustee's effort to conserve costs, the cost to maintain this database for several more months is outweighed by the prejudice to Requestors—most of whom have appointed counsel—of losing reasonable access to these documents. Indeed, archiving NECC's document collection will likely be more costly to NECC because, when subpoenaed, NECC will be required to restore and revive that expansive collection.

Furthermore, Cadden has a contractual right to access NECC's documents. His settlement agreement, "The Plan Support and Funding Agreement," states: "Following entry of the Rule 9019 Order, the Trustee and the Estate Representative shall provide each Contributor and his or her counsel access to the document depository maintained by the Debtor containing the Debtor's business records and communication files maintained in the ordinary course of the Debtor's business through the Petition Date to enable each Contributor to view and print such non-privileged documents as are determined by a Contributor, in his or her sole discretion, relevant to the Contributor's defense of any and all Claims against him or her, in any other administrative, investigative, or judicial proceeding."¹ This provision was specifically negotiated due to the criminal charges. Dismantling the database before the criminal trial will thwart that bargained-for provision.

The NECC database has been maintained for years. It would be short-sighted to archive it now as the criminal trials approach. The NECC document collection should continue to be maintained for a few short months more in the interests of justice.

¹ The Agreement goes to address the need for an agreed-upon confidentiality agreement.

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Dated: November 2, 2016

LOCAL RULE 7.1 CERTIFICATION/EXPLANATION

The Protective Order provides that parties should request written approval for relief from its terms. Accordingly, undersigned has not conferred this request as it does not appear to fall within Local Rule 7.1.

/s/ Stephen Weymouth
Stephen Weymouth

REQUEST FOR HEARING

Requestors hereby request a hearing on the issues presented in this motion.

/s/ Stephen Weymouth
Stephen Weymouth

CERTIFICATE OF SERVICE

I, Stephen Weymouth, hereby certify that this document has been filed through the ECF system will be sent electronically to the registered participants as identified on the Notice of Electronic Filing (NEF) and paper copies will be sent to those indicated as non-registered participants on this date.

/s/ Stephen Weymouth
Stephen Weymouth

Dated: November 2, 2016